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IN THE

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1988

JAMES A. BRINGLE and NORMA L. BRINGLE,

Petitioners,

v.

WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH SERVICES, et al.,

Respondents.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS STATE OF WASHINGTON, DIVISION II

RESPONDENTS' BRIEF IN OPPOSITION

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8 pp

TABLE OF CONTENTS

	Page
STATEMENT	1
ARGUMENT	5
I. The issues are now moot	5
II. The Court's decision below was correct	5
CONCLUSION	6

TABLE OF AUTHORITIES

CASES

Rivera v. Marcus, 696 F.2d 1016 (2nd Cir. 1982)	6

STATUTES

Wash.Rev. Code ch. 11.88	2
Wash.Rev. Code ch. 13.34	2
Wash.Rev. Code ch. 26.09	2
Wash.Rev. Code ch. 26.33	2

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STATEMENT

James and Norma Bringle are the maternal grandparents of Patrick and Jennifer Bollinger. The Bringles claim that they were denied their constitutional rights in the Washington State dependency proceedings concerning the Bollinger children. A brief description of Washington State dependency law is necessary to put their claim in context.

Purpose of Dependency Proceedings and Method of Commencement.

Dependency proceedings are judicial proceedings initiated by the state to protect children from parental abuse, neglect, or abandonment. Parents are entitled to a hearing within seventy-two hours of the filing of a Dependency Petition and to appointment of counsel if indigent. A Guardian Ad Litem may be appointed for the children. Absent agreement of the parties, a bench trial will be held to determine if the children are dependent. If dependency is established, the court will enter a dispositional order determining the children's placement and the plan to reunify the family. A dependent child is a ward of the court and the court assumes supervision. See generally Wash. Rev. Code ch. 13.34.

Review Hearings in Dependency Proceedings.

The court reviews the overall situation, including efforts to reunify the family, at least every six months. See Wash. Rev. Code § 13.34.130. If the family cannot be reunified, the state may file a petition for termination of parental rights. It is important to note that dependency proceedings are not general custody proceedings; rather they focus on the parent-child relationship. Separate statutes govern guardianship, third-party custody, and adoption actions. Wash. Rev. Code ch. 11.88 (guardianship), ch.26.09 (third party custody), ch. 26.33 (adoption).

Commencement of These Proceedings.

The State of Washington filed dependency petitions on behalf of the Bollinger children on October 19, 1984 following allegations of abuse and neglect. CP 1-2; RSCP 151-152.[1]

The parents entered into an Agreed Order of Dependency with the state placing the children in foster care care under DSHS supervision on December 27, 1984. CP 3-6; RSCP 145-147.

The Bringles, who live in California, hired a local Wash-

[1] Petitioner's clerk's papers below are designed as "CP." Respondent's supplemental clerk's papers below are designated as "RSCP."

ington attorney and moved to intervene and vacate the dependency orders on February 11, 1985. CP 2-10. The motions were denied by a court commissioner on April 3, 1985 and by a superior court judge on August 30, 1985. CP 31, 33-34.

At a hearing on May 13, 1985, the court continued the foster care placement and ordered DSHS to contact the State of California to determine if the Bringles could care for the children. RSCP 155-157.

On August 15, 1985, the Bollingers relinquished their parental rights to their children. RSCP 134-139. They consented to their children's adoption and did not designate an adoptive family. RSCP 134-139.

On August 23, 1985, the children were placed in the temporary custody of the Bringles. The placement was temporary pending final approval by California through a home study report. CP 32. On January 23, 1986, the court continued the children's placement with the Bringles and ordered DSHS to seek an adoption placement which would allow all grandparents to continued contact with the children, if possible. CP 123-125.

The June 24, 1986 Review Hearing and its Aftermath.

The court set an early review hearing at DSHS request for June 24, 1986. CP 126-129. It is this review hearing of which the Bringles now complain. On June 17, 1986, the DSHS caseworker phoned the Bringles and told them there would be a hearing on June 24, 1986 where DSHS would recommend return of the children to the State of Washington. CP 139-140; RSCP 90-91. On or around June 16, 1986, Assistant Attorney General Deborah Mull telephoned the Bringle's prior counsel to determine if he still represented the Bringles and to inform him the state was seeking the return of the children. RSCP 118-121.

The Bringles did not appear at the hearing on June 24, 1986. Upon the recommendations of DSHS and the children's Guardian Ad Litem, the court ordered that the chil-

dren be returned to Washington and be placed in a pre-adoptive home. CP 35; RSCP 123.

The DSHS caseworker recommended the change because the Bringles were not a suitable placement for the children. Mrs. Bringle told California authorities that she could not manage the stress of caring for both children. She added that her spouse had threatened he would never forgive her if she did anything to cause the childrens' removal. In March, 1986, the Bringles placed the children with the Derrick family who guaranteed visits for the Bringles. On May 15, 1986, Mrs. Derrick told California authorities that she could not care for the children because of Mrs. Bringle's attitude toward them. RSCP 128-130. The court was also advised by DSHS that the Bringles would continue to interfere with any placement prospects in California, that the children's safety was at risk because their abusive mother had been in the Bringles' home, and that the children would have a better opportunity for adoption in Washington. RSCP 108-115.

On July 16, 1986, the Bringles petitioned for the Appointment of a Temporary Guardian in California without giving notice to DSHS. The California temporary guardianship order was vacated on August 11, 1986 because DSHS did not receive proper notice. RSCP 76-77.

The Bringles reset the matter for hearing in California on August 19, 1986, giving DSHS four hours notice. After hearing arguments, the court dismissed the Guardianship Petition, held that California did not have jurisdiction to hear the case, and ordered the children be returned to Washington. RSCP 177. The children were placed in a pre-adoptive foster home in Washington. CP 35; RSCP 123.

On September 19, 1986, the Bringles with their former counsel filed an action seeking to intervene, to vacate the June 24, 1986 order, to stay the adoption proceeding and to return the children to their care. CP 56-57.

Following a hearing on October 9, 1986, the court commissioner denied the Bringles' motions. CP 73-78; RSCP 66-71. The Bringles moved to revise the commissioner's ruling. CP 79. Judge Arthur Verharen heard the matter and denied the Bringles' motions, adopting the commissioner's Findings

of Fact, Conclusions of Law and Order entered on October 28, 1986. CP 2104-105; RSCP 51-52.

On February 2, 1987, the Bringles appealed the judge's ruling. CP 106. The Court of Appeals affirmed the ruling by written decision dated May 18, 1988. The Bollinger children were adopted by decree entered June 26, 1987. See Decree of Adoption in Cause No. 87-5-00144-2, Superior Court of the State of Washington for Kitsap County. The children's dependency actions were dismissed on August 5, 1987. See Motion and Order Dismissing Dependency in Cause Nos. 131566/131567, Superior Court of the State of Washington for Pierce County.

ARGUMENT

I. The issues are now moot.

The Bollinger children have now been adopted. The Bringles do not appear to contest the validity of this adoption. Instead, the Bringles claim that they were denied notice and opportunity to address the removal of the children from their care. If the Bringles wanted permanent custody and control of their grandchildren, they could have filed an adoption, guardianship, or a third-party custody action in Washington. This they never did. Now that a permanent and stable home has been found and the children are adopted, this Court should not consider the Bringles' request to be temporary caretakers. RSCP 128-130, CP 65-67.

II. The Court's decision below was correct.

The Bringles had notice and an opportunity to be heard at the pivotal hearing of June 24, 1986. The Bringles were notified of the hearing by the DSHS caseworker one week earlier. The caseworker told the Bringles that she would seek return of the children to Washington. In addition, the state's attorney contacted the Bringles' former counsel and informed him a hearing was forthcoming. The Bringles were given notice and opportunity to appear at the hearing to contest the children's removal. Their rights were not violated

since they decided not to exercise their opportunity to appear at the hearing.

Rivera v. Marcus, 696 F.2d 1016 (2nd Cir. 1982) is distinguishable from the facts of this case. In *Rivera*, the court held that an adult half-sister who had cared for dependent children for the first six years of their lives was entitled to notice and opportunity to contest the removal of the children from her care. The court characterized their relationship as "surrogate mother" and "surrogate children" since the children knew no other parent. 696 F.2d at 1025-1028.

The Bringles are not "surrogate parents." In addition to their parents, the Bollinger children have lived with foster parents, pre-adoptive families and the Bringles. Their interest, if any, did not approach the interest protected in *Rivera*. Their involvement was only as temporary caretakers.

The *Rivera* court required notice and an opportunity to be heard. 696 F.2d at 1028. The Bringles received timely and adequate notice of the reasons for removal, the opportunity to retain counsel and the opportunity to appear at the hearing. At the June 24, 1986 hearing, the court decided to return the children to Washington State after hearing the arguments and evidence presented by DSHS and the children's Guardian Ad Litem. The Bringles ignore the facts by claiming that they did not have notice of the June 24, 1986 hearing.

CONCLUSION

The Bringles' case is based upon a misstatement of the facts below to justify a continuing interference into the lives of the Bollinger children. This court should deny the Petition for Certiorari.

Respectfully submitted this 17th day of March, 1989.

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